

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1569**

**Introduced by Assembly Member Correa**

February 21, 2003

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~~An act to amend Section 1596.871 of the Health and Safety Code, An act~~ relating to care facilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1569, as amended, Correa. Child day care facilities: criminal record information: ~~disclosure study~~.

~~Existing law, the~~

*The California Child Day Care Facilities Act*, provides for the licensure and regulation of child day care facilities by the State Department of Social Services.

Existing law requires the department to obtain criminal record information on specified individuals from appropriate law enforcement agencies prior to issuing a license or permit to operate or manage a child day care facility and prior to employment, residence, or presence in the facility.

Existing law disqualifies any individual convicted of a crime other than a minor traffic violation or arrested for designated crimes from obtaining a child day care facility license or permit, or from employment, residence, or presence in a child day care facility under these provisions, except that the department may grant an exemption from this disqualification if certain conditions exist.

~~The California Public Records Act provides that except for exempt records, every state or local agency, upon request, shall make public records, as defined, available to any person upon payment of fees to cover costs.~~

~~This bill would provide that, on and after July 1, 2004, if the department grants an exemption from disqualification, as described above, the department shall document this exemption, as prescribed, the document shall be a public record subject to the California Public Records Act, and, upon request, the document shall be made available by the department pursuant to that act.~~

*This bill would require the office of the Legislative Analyst to complete and submit to the Legislature a study concerning the criminal background check process for child day care facilities conducted by the State Department of Social Services and the Department of Justice.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~—no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 1596.871 of the Health and Safety Code~~  
2     *SECTION 1. On or before January 1, 2005, the office of the*  
3     *Legislative Analyst shall complete and submit to the Legislature*  
4     *a study concerning the criminal background check process for*  
5     *child day care facilities conducted by the State Department of*  
6     *Social Services and the Department of Justice. This study shall*  
7     *include all of the following:*  
8     *(a) An assessment of whether the current statutes and practices*  
9     *adequately address the concerns expressed in report number*  
10    *2000-102 of the Bureau of State Audits.*  
11    *(b) A review of the reforms implemented by the State*  
12    *Department of Social Services since the publication of report*  
13    *number 2000-102.*  
14    *(c) An examination of whether complaints concerning child*  
15    *day care facilities are investigated in a timely manner.*  
16    *(d) A report on the number of disciplinary infractions that have*  
17    *occurred involving child day care facilities since the publication*  
18    *of report number 2000-102 and the outcomes of these infractions,*  
19    *including, but not limited to, all of the following:*  
20    *(1) License suspension.*  
21    *(2) License revocation.*

1 (3) *Release of an employee.*

2 (e) *An assessment of the integration of complaint tracking*  
3 *systems, as they pertain to potential criminal employee behavior,*  
4 *into the child day care facility licensing process.*

5 ~~is amended to read:~~

6 ~~1596.871. The Legislature recognizes the need to generate~~  
7 ~~timely and accurate positive fingerprint identification of~~  
8 ~~applicants as a condition of issuing licenses, permits, or~~  
9 ~~certificates of approval for persons to operate or provide direct~~  
10 ~~care services in a child day care center or family child care home.~~  
11 ~~Therefore, the Legislature supports the use of the fingerprint~~  
12 ~~live-scan technology, as defined in the long range plan of the~~  
13 ~~Department of Justice for fully automating the processing of~~  
14 ~~fingerprints and other data by the year 1999, otherwise known as~~  
15 ~~the California Crime Information Intelligence System (CAL-CII),~~  
16 ~~to be used for applicant fingerprints. It is the intent of the~~  
17 ~~Legislature in enacting this section to require the fingerprints of~~  
18 ~~those individuals whose contact with child day care facility clients~~  
19 ~~may pose a risk to the children's health and safety.~~

20 ~~(a) (1) Before issuing a license or special permit to any person~~  
21 ~~to operate or manage a child day care facility, the department shall~~  
22 ~~secure from an appropriate law enforcement agency a criminal~~  
23 ~~record to determine whether the applicant or any other person~~  
24 ~~specified in subdivision (b) has ever been convicted of a crime~~  
25 ~~other than a minor traffic violation or arrested for any crime~~  
26 ~~specified in Section 290 of the Penal Code, for violating Section~~  
27 ~~245 or 273.5, subdivision (b) of Section 273a or, prior to January~~  
28 ~~1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for~~  
29 ~~any crime for which the department cannot grant an exemption if~~  
30 ~~the person was convicted and the person has not been exonerated.~~

31 ~~(2) The criminal history information shall include the full~~  
32 ~~criminal record, if any, of those persons, and subsequent arrest~~  
33 ~~information pursuant to Section 11105.2 of the Penal Code.~~

34 ~~(3) No fee shall be charged by the Department of Justice or the~~  
35 ~~department for the fingerprinting of an applicant who will serve~~  
36 ~~six or fewer children or any family day care applicant for a license,~~  
37 ~~or for obtaining a criminal record of an applicant pursuant to this~~  
38 ~~section.~~

39 ~~(4) The following shall apply to the criminal record~~  
40 ~~information:~~

1     ~~(A) If the State Department of Social Services finds that the~~  
2     ~~applicant or any other person specified in subdivision (b) has been~~  
3     ~~convicted of a crime, other than a minor traffic violation, the~~  
4     ~~application shall be denied, unless the director grants an~~  
5     ~~exemption pursuant to subdivision (f).~~

6     ~~(B) If the State Department of Social Services finds that the~~  
7     ~~applicant, or any other person specified in subdivision (b), is~~  
8     ~~awaiting trial for a crime other than a minor traffic violation, the~~  
9     ~~State Department of Social Services may cease processing the~~  
10    ~~application until the conclusion of the trial.~~

11    ~~(C) If no criminal record information has been recorded, the~~  
12    ~~Department of Justice shall provide the applicant and the State~~  
13    ~~Department of Social Services with a statement of that fact.~~

14    ~~(D) If the State Department of Social Services finds after~~  
15    ~~licensure that the licensee, or any other person specified in~~  
16    ~~paragraph (2) of subdivision (b), has been convicted of a crime~~  
17    ~~other than a minor traffic violation, the license may be revoked,~~  
18    ~~unless the director grants an exemption pursuant to subdivision (f).~~

19    ~~(E) An applicant and any other person specified in subdivision~~  
20    ~~(b) shall submit a second set of fingerprints to the Department of~~  
21    ~~Justice, for the purpose of searching the records of the Federal~~  
22    ~~Bureau of Investigation, in addition to the search required by~~  
23    ~~subdivision (a). If an applicant meets all other conditions for~~  
24    ~~licensure, except receipt of the Federal Bureau of Investigation's~~  
25    ~~criminal history information for the applicant and persons listed in~~  
26    ~~subdivision (b), the department may issue a license if the applicant~~  
27    ~~and each person described by subdivision (b) has signed and~~  
28    ~~submitted a statement that he or she has never been convicted of~~  
29    ~~a crime in the United States, other than a traffic infraction as~~  
30    ~~defined in paragraph (1) of subdivision (a) of Section 42001 of the~~  
31    ~~Vehicle Code. If, after licensure, the department determines that~~  
32    ~~the licensee or person specified in subdivision (b) has a criminal~~  
33    ~~record, the license may be revoked pursuant to Section 1596.885.~~  
34    ~~The department may also suspend the license pending an~~  
35    ~~administrative hearing pursuant to Section 1596.886.~~

36    ~~(b) (1) In addition to the applicant, this section shall apply to~~  
37    ~~criminal convictions of the following persons:~~

38    ~~(A) Adults responsible for administration or direct supervision~~  
39    ~~of staff.~~

40    ~~(B) Any person, other than a child, residing in the facility.~~

~~(C) Any person who provides care and supervision to the children.~~

~~(D) Any staff person, volunteer, or employee who has contact with the children, except any of the following:~~

~~(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.~~

~~(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.~~

~~(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.~~

~~(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.~~

~~(v) Any person similar to those described in this subdivision, as defined by the department in regulations.~~

~~(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.~~

~~(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.~~

~~(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based~~

1 on the person's capability to exercise substantial influence over the  
2 operation of the facility.

3 (2) This section does not apply to employees of child care and  
4 development programs under contract with the State Department  
5 of Education who have completed a criminal records clearance as  
6 part of an application to the Commission on Teacher  
7 Credentialing, and who possess a current credential or permit  
8 issued by the commission, including employees of child care and  
9 development programs that serve both children subsidized under,  
10 and children not subsidized under, a State Department of  
11 Education contract. The Commission on Teacher Credentialing  
12 shall notify the department upon revocation of a current credential  
13 or permit issued to an employee of a child care and development  
14 program under contract with the State Department of Education.

15 (3) This section does not apply to employees of a child care and  
16 development program operated by a school district, county office  
17 of education, or community college district under contract with the  
18 State Department of Education who have completed a criminal  
19 record clearance as a condition of employment. The school  
20 district, county office of education, or community college district  
21 upon receiving information that the status of an employee's  
22 criminal record clearance has changed shall submit that  
23 information to the department.

24 (4) Nothing in this subdivision shall prevent a licensee from  
25 requiring a criminal record clearance of any individuals exempt  
26 from the requirements under this subdivision.

27 (c) (1) (A) Subsequent to initial licensure, any person  
28 specified in subdivision (b) and not exempted from fingerprinting  
29 shall, as a condition to employment, residence, or presence in a  
30 child day care facility be fingerprinted and sign a declaration under  
31 penalty of perjury regarding any prior criminal conviction. The  
32 licensee shall submit these fingerprints to the Department of  
33 Justice, along with a second set of fingerprints for the purpose of  
34 searching the records of the Federal Bureau of Investigation, or to  
35 comply with paragraph (1) of subdivision (h), prior to the person's  
36 employment, residence, or initial presence in the child day care  
37 facility.

38 (B) These fingerprints shall be on a card provided by the State  
39 Department of Social Services for the purpose of obtaining a  
40 permanent set of fingerprints and submitted to the Department of

1 ~~Justice by the licensee or sent by electronic transmission in a~~  
2 ~~manner approved by the State Department of Social Services. A~~  
3 ~~licensee's failure to submit fingerprints to the Department of~~  
4 ~~Justice, or to comply with paragraph (1) of subdivision (h), as~~  
5 ~~required in this section, shall result in the citation of a deficiency,~~  
6 ~~and an immediate assessment of civil penalties in the amount of~~  
7 ~~one hundred dollars (\$100) per violation. The State Department of~~  
8 ~~Social Services may assess civil penalties for continued violations~~  
9 ~~permitted by Sections 1596.99 and 1597.62. The fingerprints shall~~  
10 ~~then be submitted to the State Department of Social Services for~~  
11 ~~processing. Within 14 calendar days of the receipt of the~~  
12 ~~fingerprints, the Department of Justice shall notify the State~~  
13 ~~Department of Social Services of the criminal record information,~~  
14 ~~as provided in this subdivision. If no criminal record information~~  
15 ~~has been recorded, the Department of Justice shall provide the~~  
16 ~~licensee and the State Department of Social Services with a~~  
17 ~~statement of that fact within 14 calendar days of receipt of the~~  
18 ~~fingerprints. If new fingerprints are required for processing, the~~  
19 ~~Department of Justice shall, within 14 calendar days from the date~~  
20 ~~of receipt of the fingerprints, notify the licensee that the~~  
21 ~~fingerprints were illegible.~~

22 ~~(C) Documentation of the individual's clearance or exemption~~  
23 ~~shall be maintained by the licensee, and shall be available for~~  
24 ~~inspection. When live-scan technology is operational, as defined~~  
25 ~~in Section 1522.04, the Department of Justice shall notify the~~  
26 ~~department, as required by that section, and notify the licensee by~~  
27 ~~mail within 14 days of electronic transmission of the fingerprints~~  
28 ~~to the Department of Justice, if the person has no criminal record.~~  
29 ~~Any violation of the regulations adopted pursuant to Section~~  
30 ~~1522.04 shall result in the citation of a deficiency and an~~  
31 ~~immediate assessment of civil penalties in the amount of one~~  
32 ~~hundred dollars (\$100) per violation. The department may assess~~  
33 ~~civil penalties for continued violations, as permitted by Sections~~  
34 ~~1596.99 and 1597.62.~~

35 ~~(2) (A) Except for persons specified in paragraph (2) of~~  
36 ~~subdivision (b), the licensee shall endeavor to ascertain the~~  
37 ~~previous employment history of persons required to be~~  
38 ~~fingerprinted under this subdivision. If it is determined by the~~  
39 ~~department, on the basis of fingerprints submitted to the~~  
40 ~~Department of Justice, that the person has been convicted of a sex~~



~~1 offense against a minor, an offense specified in Section 243.4,  
2 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State  
3 Department of Social Services shall notify the licensee to act  
4 immediately to terminate the person's employment, remove the  
5 person from the child day care facility, or bar the person from  
6 entering the child day care facility. The department may  
7 subsequently grant an exemption pursuant to subdivision (f). If the  
8 conviction was for another crime except a minor traffic violation,  
9 the licensee shall, upon notification by the State Department of  
10 Social Services, act immediately to either (1) terminate the  
11 person's employment, remove the person from the child day care  
12 facility, or bar the person from entering the child day care facility;  
13 or (2) seek an exemption pursuant to subdivision (f).~~

~~14 (B) The department shall determine if the person shall be  
15 allowed to remain in the facility until a decision on the exemption  
16 is rendered. A licensee's failure to comply with the department's  
17 prohibition of employment, contact with clients, or presence in the  
18 facility as required by this paragraph shall be grounds for  
19 disciplining the licensee pursuant to Section 1596.885 or  
20 1596.886.~~

~~21 (3) The department may issue an exemption on its own motion  
22 pursuant to subdivision (f) if the person's criminal history  
23 indicates that the person is of good character based on the age,  
24 seriousness, and frequency of the conviction or convictions. The  
25 department, in consultation with interested parties, shall develop  
26 regulations to establish the criteria to grant an exemption pursuant  
27 to this paragraph.~~

~~28 (4) Concurrently with notifying the licensee pursuant to  
29 paragraph (3), the department shall notify the affected individual  
30 of his or her right to seek an exemption pursuant to subdivision (f).  
31 The individual may seek an exemption only if the licensee  
32 terminates the person's employment or removes the person from  
33 the facility after receiving notice from the department pursuant to  
34 paragraph (3).~~

~~35 (d) (1) For purposes of this section or any other provision of  
36 this chapter, a conviction means a plea or verdict of guilty or a  
37 conviction following a plea of nolo contendere. Any action which  
38 the department is permitted to take following the establishment of  
39 a conviction may be taken when the time for appeal has elapsed,  
40 or the judgment of conviction has been affirmed on appeal or when~~



1 ~~an order granting probation is made suspending the imposition of~~  
2 ~~sentence, notwithstanding a subsequent order pursuant to Sections~~  
3 ~~1203.4 and 1203.4a of the Penal Code permitting the person to~~  
4 ~~withdraw his or her plea of guilty and to enter a plea of not guilty,~~  
5 ~~or setting aside the verdict of guilty, or dismissing the accusation,~~  
6 ~~information, or indictment. For purposes of this section or any~~  
7 ~~other provision of this chapter, the record of a conviction, or a copy~~  
8 ~~thereof certified by the clerk of the court or by a judge of the court~~  
9 ~~in which the conviction occurred, shall be conclusive evidence of~~  
10 ~~the conviction. For purposes of this section or any other provision~~  
11 ~~of this chapter, the arrest disposition report certified by the~~  
12 ~~Department of Justice, or documents admissible in a criminal~~  
13 ~~action pursuant to Section 969b of the Penal Code, shall be prima~~  
14 ~~facie evidence of conviction, notwithstanding any other provision~~  
15 ~~of law prohibiting the admission of these documents in a civil or~~  
16 ~~administrative action.~~

17 ~~(2) For purposes of this section or any other provision of this~~  
18 ~~chapter, the department shall consider criminal convictions from~~  
19 ~~another state or federal court as if the criminal offense was~~  
20 ~~committed in this state.~~

21 ~~(e) The State Department of Social Services shall not use a~~  
22 ~~record of arrest to deny, revoke, or terminate any application,~~  
23 ~~license, employment, or residence unless the department~~  
24 ~~investigates the incident and secures evidence, whether or not~~  
25 ~~related to the incident of arrest, that is admissible in an~~  
26 ~~administrative hearing to establish conduct by the person that may~~  
27 ~~pose a risk to the health and safety of any person who is or may~~  
28 ~~become a client. The State Department of Social Services is~~  
29 ~~authorized to obtain any arrest or conviction records or reports~~  
30 ~~from any law enforcement agency as necessary to the performance~~  
31 ~~of its duties to inspect, license, and investigate community care~~  
32 ~~facilities and individuals associated with a community care~~  
33 ~~facility.~~

34 ~~(f) (1) After review of the record, the director may grant an~~  
35 ~~exemption from disqualification for a license or special permit as~~  
36 ~~specified in paragraphs (1) and (4) of subdivision (a), or for~~  
37 ~~employment, residence, or presence in a child day care facility as~~  
38 ~~specified in paragraphs (3) and (4) of subdivision (e) if the director~~  
39 ~~has substantial and convincing evidence to support a reasonable~~  
40 ~~belief that the applicant and the person convicted of the crime, if~~

1 other than the applicant, are of good character so as to justify  
2 issuance of the license or special permit or granting of an  
3 exemption for purposes of subdivision (c). However, no  
4 exemption shall be granted pursuant to this subdivision if the  
5 conviction was for any of the following offenses:

6 (A) An offense specified in Section 220, 243.4, or 264.1,  
7 subdivision (a) of Section 273a or, prior to January 1, 1994,  
8 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
9 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
10 or was a conviction of another crime against an individual  
11 specified in subdivision (c) of Section 667.5 of the Penal Code.

12 (B) A felony offense specified in Section 729 of the Business  
13 and Professions Code or Section 206 or 215, subdivision (a) of  
14 Section 347, subdivision (b) of Section 417, or subdivision (a) or  
15 (b) of Section 451 of, the Penal Code.

16 (2) The department shall not prohibit a person from being  
17 employed or having contact with clients in a facility on the basis  
18 of a denied criminal record exemption request or arrest  
19 information unless the department complies with the requirements  
20 of Section 1596.8897.

21 (3) Notwithstanding any other law, on and after July 1, 2004,  
22 if the department grants an exemption to an individual pursuant to  
23 this subdivision, the department shall document this exemption,  
24 including, but not limited to, the address of the child day care  
25 facility, the name of the individual, and the specific conviction for  
26 which exemption was granted. This document shall be a public  
27 record subject to the California Public Records Act (Chapter 3.5  
28 (commencing with Section 6250) of Division 7 of the Government  
29 Code) and, upon request, shall be made available by the  
30 department pursuant to that act.

31 (g) Upon request of the licensee, who shall enclose a  
32 self-addressed stamped postcard for this purpose, the Department  
33 of Justice shall verify receipt of the fingerprints.

34 (h) (1) For the purposes of compliance with this section, the  
35 department may permit an individual to transfer a current criminal  
36 record clearance, as defined in subdivision (a), from one facility  
37 to another, as long as the criminal record clearance has been  
38 processed through a state licensing district office, and is being  
39 transferred to another facility licensed by a state licensing district  
40 office. The request shall be in writing to the department, and shall

1 ~~include a copy of the person's driver's license or valid~~  
2 ~~identification card issued by the Department of Motor Vehicles, or~~  
3 ~~a valid photo identification issued by another state or the United~~  
4 ~~States government if the person is not a California resident. Upon~~  
5 ~~request of the licensee, who shall enclose a self-addressed stamped~~  
6 ~~envelope for this purpose, the department shall verify whether the~~  
7 ~~individual has a clearance that can be transferred.~~

8 ~~(2) The State Department of Social Services shall hold criminal~~  
9 ~~record clearances in its active files for a minimum of two years~~  
10 ~~after an employee is no longer employed at a licensed facility in~~  
11 ~~order for the criminal record clearances to be transferred.~~

12 ~~(i) Amendments to this section made in the 1998 calendar year~~  
13 ~~shall be implemented commencing 60 days after the effective date~~  
14 ~~of the act amending this section in the 1998 calendar year, except~~  
15 ~~those provisions for the submission of fingerprints for searching~~  
16 ~~the records of the Federal Bureau of Investigation, which shall be~~  
17 ~~implemented commencing January 1, 1999.~~